

### **REMARKS**

This Amendment is submitted in response to the Office Action mailed December 9, 2003. At that time claims 1-31 were pending in the application. In the Office Action, the Examiner rejected claims 1-3, 9, and 16-17 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,328,332 to Schutz (hereinafter "Schutz"). Claims 1-8, 10, 15, and 18-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,860,672 to Petersen (hereinafter "Petersen") in view of Schutz. The Examiner further rejected claims 11-14 under 35 U.S.C. §103(a) as being unpatentable over Schutz in view of U.S. Patent No. 6,474,684 to Ludwig et al. (hereinafter "Ludwig"). Claims 27-30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Petersen and Schutz and further in view of Ludwig. The Examiner also rejected claim 31 under 35 U.S.C. §103(a) as being unpatentable over Schutz in view of Ludwig.

By this Amendment, claims 1, 18, and 31 have been amended. Claim 2 has been cancelled. Accordingly, claims 1 and 3-31 are presented for reconsideration by the Examiner.

### **REJECTION OF CLAIMS 1-3, 9, AND 16-17 UNDER 35 U.S.C. §102(e)**

The Examiner rejected claims 1-3, 9, and 16-17 under 35 U.S.C. §102(e) as being anticipated by Schutz. See Office Action, page 2. The Applicants respectfully traverse this rejection.

It is well settled that a claim is anticipated under 35 U.S.C. § 102(e) only if "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." MPEP §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

As a result of this paper, claims 1-3, 9, and 16-17 include the limitation that the housing of the airbag module is "shaped to be mounted within a cavity in an instrument panel on the passenger side of a vehicle." Support for this limitation can be found, for example, in the specification on page 4, lines 18-24, and page 5, lines 13-15. Such a limitation is not taught or disclosed by Schutz, and as such, Schutz does not anticipate under §102(e).

Schutz discloses a gas bag module with an inflator having a flangeless housing configured for use within a steering wheel of a vehicle. *See* Schutz, col. 1, lines 24-27, and 44. The gas bag module of Schutz is a *driver's side* airbag module that is housed within a steering wheel of a vehicle. *See* col. 3, line 20. All embodiments described in Schutz are designed to be housed and operated within a steering wheel of a vehicle. *See* Figures 1-5, reference numeral 40 (steering wheel axis). Therefore Schutz cannot be a passenger side airbag module. Neither can Schutz include the limitation that the housing or carrier (3) is shaped to be mounted within a cavity of the instrument panel as the device disclosed in Schutz is shaped to be mounted within a steering wheel of a vehicle.

Therefore, Schutz does not recite each and every claim limitation of the rejected claims. Accordingly, Schutz cannot anticipate under 35 U.S.C. §102(e). Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIMS 1-8, 10, 15, AND 18-26 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 1-8, 10, 15, and 18-26 under 35 U.S.C. §103(a) as being unpatentable over Petersen in view of Schutz. *See* Office Action, page 3. The Applicants respectfully traverse this rejection.

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness. It is well settled that the PTO has the burden to establish a *prima facie* case of obviousness. *See* MPEP §2142. "If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." *Id.* According to MPEP §2143.03, to establish a *prima facie* case of obviousness, "all of the claim limitations must be taught or suggested by the prior art." (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (C.C.P.A. 1974)). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

As a result of this paper, claims 1-8, 10, 15, and 18-26 recite a "passenger side" airbag module. Claims 1-8, 10, and 15 further include the limitation that the housing is "shaped to be mounted within a cavity in an instrument panel on the passenger side of a vehicle." Claims 18-

26 include the limitation that "the inflatable cushion [is] shaped to be mounted within an instrument panel on the passenger side of a vehicle." These limitations are not taught by either Schutz or Petersen, and as such Schutz and Petersen cannot be combined to establish obviousness of the claimed invention.

As was discussed above, Schutz does not teach these limitations as Schutz describes a gas bag module mounted within a steering wheel. Moreover, Petersen also does not disclose these limitations. Petersen discloses an airbag baffle mount. *See* Petersen, col. 1, lines 4-7. The baffle mount of Petersen is for use with an airbag module within a steering wheel on a driver's side. *See, e.g.,* col. 1, lines 15-19, lines 51-56. It is not a *passenger side* airbag module as recited in the pending claims.

As per claims 1-8, 10, and 15, Petersen does not disclose a housing shaped to be mounted within a cavity in an instrument panel on the passenger side. First, the baffle mount of Petersen is shaped to be mounted within a steering wheel and not an instrument panel. Second, Petersen does not even disclose a housing. Instead, Petersen discloses a module base plate. *See* col. 4, lines 52-57 (reference numeral 42 on Figure 4). A housing is an enclosure. A base plate is a horizontal structure. A base plate cannot enclose anything, therefore, it is not a housing. Since Petersen does not disclose a housing, it follows that Petersen does not disclose a housing shaped to be mounted within a cavity in an instrument panel.

As per claims 18-26, Petersen does not disclose an inflatable cushion shaped to be mounted within an instrument panel on the passenger side. Although Petersen discloses an inflatable cushion (38), it is shaped to be mounted within a steering wheel and not within an instrument panel. The deflection baffle (32) of Petersen is shaped to maximize radial expansion of the cushion to ensure adequate lateral coverage of the airbag over the steering wheel. *See* col. 1, lines 49-56; col. 3, lines 43-46; col. 6, lines 5-8 and 19-24. Therefore, Petersen does not teach a passenger side airbag module having an inflatable cushion shaped to be mounted within an instrument panel.

As both Petersen and Schutz, in combination, fail to teach all the claim limitations, a *prima facie* case of obviousness has not been established. Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIMS 11-14 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 11-14 under 35 U.S.C. §103(a) as being unpatentable over Schutz in view of Ludwig. *See* Office Action, page 6. Applicants respectfully traverse this rejection.

As noted above, a *prima facie* case of obviousness under §103(a) is not established unless all of the claim limitations are taught or suggested by the prior art. MPEP §2143.03. As a result of this paper, claims 11-14 recite a passenger side airbag module having a housing shaped to be mounted within a cavity in an instrument panel. As discussed previously, Schutz does not disclose these limitations. Ludwig is cited by the Examiner for its disclosure of an inflator capable of modulated pressurization. *See* Ludwig, col. 1, lines 9-11; col. 5, lines 45-48. Ludwig does not disclose a passenger side airbag module with a housing shaped to be mounted in an instrument panel. Ludwig merely discloses an airbag inflator. Therefore, Schutz and Ludwig cannot be combined to reject claims 11-14 under §103(a) because Schutz and Ludwig fail to teach all of the limitations recited. Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIMS 27-30 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 27-30 under 35 U.S.C. §103(a) as being unpatentable over Petersen and Schutz and further in view of Ludwig. *See* Office Action, page 7. The Applicants respectfully traverse this rejection.

All claim limitations must be taught or suggested by the prior art for the Examiner to establish *prima facie* obviousness under §103(a). MPEP §2143.03. As a result of this paper, claims 27-30 recite a passenger side airbag module having an inflatable cushion that is shaped to be mounted within an instrument panel on the passenger side. As discussed previously, neither Schutz nor Petersen disclose these limitations. Furthermore, as noted above, Ludwig merely discloses an airbag inflator. Consequently, the combination of Petersen, Schutz, and Ludwig fail to teach all claim limitations. Therefore, the combination is an improper grounds for a rejection under §103(a). Withdrawal of this rejection is respectfully requested.

**REJECTION OF CLAIM 31 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claim 31 under 35 U.S.C. §103(a) as being unpatentable over Schutz in view of Ludwig. *See* Office Action, page 8. The Applicants respectfully traverse this rejection.

As noted above, a *prima facie* case of obviousness under §103(a) is not established unless all of the claim limitations are taught or suggested by the prior art. MPEP §2143.03. As a result of this paper, claim 31 recites a passenger side airbag module that includes a housing having a flange extending radially from a top end thereof, the flange shaped to be mounted to an instrument panel. Support for this limitation can be found, for example, in Figures 1-3 (top of reference numeral 45), in the specification on page 4, lines 20-24, page 5, lines 13-15, and page 11, lines 4-7.

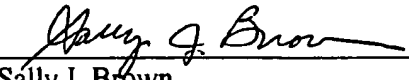
Neither Schutz nor Ludwig discloses these limitations. As discussed above, Schutz and Ludwig both fail to teach a passenger side airbag module and a housing mounted in an instrument panel on the passenger side. Claim 31 further recites a flange extending radially from a top end of the housing. This structure is not taught in Schutz. Instead, Schutz teaches a cup-shaped carrier (3). *See* col. 1, lines 37-38. The cup-shaped carrier has no flange extending radially therefrom, and cannot as it is designed to be mounted within a steering wheel. *See* col. 3, line 20; Figures 1-5 (reference numeral 40). Consequently, Ludwig and Schutz fail to teach all claim limitations of claim 31 and cannot be combined to form a rejection under §103(a). Applicants respectfully request that this rejection be withdrawn.

**CONCLUSION**

Applicants respectfully assert that claims 1 and 3-31 are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Appl. No. 09/997,554  
Amdt. dated March 3, 2004  
Reply to Office Action of December 9, 2003

Respectfully submitted,

  
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